



OFFICE OF THE CITY CLERK

REPORT

DATE: September 7, 1994 REPORT NO: 94-04

TO: Honorable Mayor and City Council

FROM: Charles G. Abdelnour, City Clerk

SUBJECT: Proposition B Revisions to the Municipal Code

On June 7, 1994, City of San Diego voters approved Proposition "B," a City Charter amendment which changed the procedures for filling vacancies in Council District offices (see attachment).

The passage of Proposition "B" necessitates revision of Division 31 of the Municipal Code which provides the procedures for filling vacancies in elective offices. I submit for your approval the following report and recommendation.

ISSUE

Shall the specified sections of the Municipal Code (see attached) be amended to bring the code into conformance with the provisions of Proposition "B" and the amended City Charter?

RECOMMENDATION

Adopt the amendments to the Municipal Code as proposed.

ALTERNATIVE

Adopt those changes that are necessary to make the Code consistent with the City Charter and maintain the requirement that there be two public hearings.

DISCUSSION

Sections 27.3101 through 27.3108 of the Municipal Code establish procedures for filling vacancies in elective offices. Voter approval of Proposition "B" in June, 1994 has resulted in the need to revise these sections. Specifically, changes are needed to distinguish between appointments to fill a vacancy in the office of the Mayor and City Attorney and those to fill a vacancy in a Council District office.

In an instance of a vacancy in the office of the Mayor or City Attorney, the Council has the authority to appoint someone to fill the vacancy. However, if the appointment is not made within thirty (30) days, the Council must immediately call a special election to fill the vacancy.

With the approval of Proposition "B," the Council must appoint someone to fill a vacancy in a Council District seat only if there is less than one year remaining in the term. All other Council vacancies must be filled by election. Unlike the appointment process for vacancies in the office of the Mayor and City Attorney, there is no time frame for the appointment process as it pertains to appointments to a Council District seat. We assume, however, that the Council will want to fill such a vacancy as quickly as possible, and to utilize the same appointment procedures as those for vacancies in other elective offices.

Specifically, the proposed changes include:


1. Proposed Section 27.3101 makes a distinction between appointments to the offices of the Mayor and City Attorney and those to a Council District seat.
2. Proposed Section 27.3102 specifies that in the case of a vacancy in a Council District seat, the presiding officer of the Council shall call a special meeting for the public hearing required by Section 27.3105. It eliminates the requirement that there be a special meeting to consider the alternative of appointment or election when the appointment is for a Council District seat.
3. Proposed Section 27.3104 includes a requirement that applicants provide their Social Security Number and file the Form 721 Statement of Economic Interests at the same time all other documents are filed with the City Clerk. The Social Security Number is required in order to complete the credit check required by this section. Section 27.3104 has been further amended to add clarifying language about the statement of qualifications. The new language was taken from Section 27.2204 - Statement of Candidates' Qualifications - and provides additional guidance to both the applicants and the Clerk in regard to these statements. It is also consistent with what is required of other candidates for elective office.
4. Proposed Section 27.3105 provides that a second public hearing is optional. This allows flexibility so that an appointment can be made following the first public hearing. This section further provides that the public hearing shall be held no sooner than the fifth (5th) day after the period for filing applications with the Clerk. This provides time for the Clerk

to verify the petition signatures and to conduct the police and credit checks, required by Section 27.3104, prior to the public hearing.

5. Proposed Section 27.3106 provides a process for a single public hearing and appointment.
6. Proposed Section 27.3107 provides a process for an optional second public hearing and appointment.
7. Proposed Section 27.3108 states that a person appointed to fill a Council District seat is not eligible to run for that office for the next succeeding term.
8. Proposed Section 27.3109 is a renumbering of previous Section 27.3108. This section applies only to appointments to the office of the Mayor and the City Attorney.

In summary, the City Clerk proposes these changes to the Municipal Code to provide a process for all appointments for elective office and to incorporate changes necessitated by the passage of Proposition B in June, 1994.

I look forward to your consideration of these amendments and, as always, should you have any questions or comments, I would be pleased to respond.


Charles G. Abdelnour
City Clerk

CGA:JL
Attachments

SAN DIEGO MUNICIPAL CODE

DIVISION 31

Procedures for Filling Vacancies in Elective Offices

(Revision - Page 1)

§ 27.3101 Purpose and Intent

The Charter of The City of San Diego requires the City Council to fill a vacancy in the elective offices of the Mayor, ~~other members of the Council~~ and the City Attorney within thirty (30) days by appointment and failing to do so within that time, the Council is required to immediately cause an election to be held to fill such vacancy. The Charter provides that if a vacancy occurs in the office of a Council District and there is one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat. If the Council vacancy occurs with more than one (1) year remaining in the term, the Council is required to call a special election to fill such vacancy. The purpose and intent of this division is to establish an orderly procedure for the Council to follow in making any appointment and for all persons interested in being appointed to the vacant office to follow in presenting their applications for consideration by the Council and at the same time to allow for public participation in the selection process.

(Added 7-23-75 by O-11654 N.S.)

§ 27.3102 Special Meeting to Consider the Alternative of Appointment or Election

As soon as it is known that there will be a vacancy in ~~an elective office~~ the office of the Mayor or City Attorney of The City of San Diego by reason of a resignation or that there exists a vacancy in such elective office by reason of a death or other unexpected circumstance, the presiding officer of the Council shall immediately call a special meeting of the Council to consider the question of whether the vacancy shall be filled by an appointment or an election. In the case of a vacancy in the office of a Council District where there will be less than one (1) year remaining in the term, the presiding officer of the Council shall call a special meeting for the public hearing required by Section 27.3105. In the instance of resignation, a notification containing the effective date of resignation must be received in the office of the City Clerk for a vacancy to occur. Unless otherwise specified, a resignation is effective when received. If the determination is made to fill the position by appointment, the procedures provided for in this division shall be followed.

(Amended 1-20-87 by O-16796 N.S.)

§ 27.3103 Notice to be Published by Clerk

a. If a vacancy exists by reason of death or other unexpected circumstance, the City Clerk shall publish within five (5) days of the occurrence of the vacancy the following notice in a paper of general circulation within the City of San Diego:

A vacancy exists in the office of (Mayor), (~~Councilman~~ Councilmember, 1st through 8th District), or (City Attorney). Interested applicants may obtain information and forms

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at the office of the City Clerk, City Administration Building, 202 C Street, San Diego, California. To be considered, applications must be returned to the office of the City Clerk by close of business, 5:00 p.m. on (insert date fourteen (14) days after occurrence of vacancy).

b. If a vacancy will exist by reason of a resignation to take effect at some future time, or by reason of an expected resignation at some future time, the City Clerk shall publish within a reasonable time the following notice:

A vacancy will exist in the office of (Mayor), (~~Councilman~~ Councilmember, 1st through 8th District), or (City Attorney) on (date of vacancy expected to occur). Interested applicants may obtain information and forms at the office of the City Clerk, City Administration Building, 202 C Street, San Diego, California. To be considered, applications must be returned to the office of the City Clerk by close of business, 5:00 p.m. on (insert date of the day before vacancy occurs if at least a fourteen (14) day interval exists between publication and date of vacancy; if not, insert date fourteen (14) days after date of publication or fourteen (14) days after occurrence of vacancy, whichever first occurs).

(Added 7-23-75 by O-11654 N.S.)

§ 27.3104 Application Forms and Requirements

a. Applicants for appointment to elective office shall file with the City Clerk on or before the date for return of applications as published by the City Clerk under Section 27.3103, the following:

1. Background information certified by the applicant that it is true and correct under penalty of perjury pursuant to Section 2015.5 of the Code of Civil Procedure disclosing the following:

- (a) Name.
- (b) Address.
- (c) Length of residence at above address and address for past five (5) years other than above.
- (d) Date of birth.
- (e) Marital status.
- (f) Social Security Number.
- (g) ~~(f)~~ Business or occupation engaged in during the past five (5) years together with address of and dates of service with each such business or occupation.
- (h) ~~(g)~~ Branch, dates and rank at discharge of military service.
- (i) ~~(h)~~ Education from high school to highest level attained together with the name of each educational institution attended and degree or diploma received.
- (j) Statement of Economic Interests Form 721.

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2. A statement under penalty of perjury from a medical doctor licensed to practice medicine in the State of California describing in general terms the physical and mental health of the applicant and certifying that the applicant is physically and mentally capable of performing the duties of the office applicant is seeking.

3. A statement of qualifications not longer than one hundred (100) words expressing in the applicant's own words the reasons why the applicant believes he or she is qualified for the office.

Such statement may include the name, age, occupation and education of the candidate and a brief description of the candidate's qualifications expressed by the candidate and limited to matter concerning only the candidate without reference to opponents or anyone else by name. Such statement shall not include the party affiliation of the candidate nor membership or activity in partisan political organizations.

Statements received by the Clerk shall be kept confidential until the expiration of the filing period.

The Clerk shall reject any statement which contains: (1) any language or matter the circulation of which through the mails is prohibited by Congress, (2) any mention of party affiliation of the candidate or membership or activity in partisan political organizations, (3) any matter not relating to the candidate, or (4) any mention of opponents or other persons by name. The statement shall not contain any obscene, vulgar, profane, scandalous, libelous or defamatory matter or any language which in any way incites, counsels, promotes or advocates hatred, abuse, violence or hostility toward, or which tends to cast ridicule or shame upon any person or group of persons by reason of race, color, religion or manner of worship.

4. A petition with the signatures of fifty (50) registered voters in form and content similar to that required by Section 27.2104 of this Code.

5. A statement under penalty of perjury that the applicant complies with the requirements of Section 27.2023 and has been a resident and elector of the City in the case of the Mayor or City Attorney, or of the district in the case of councilmembers other than the Mayor, for at least thirty (30) days prior to the date of making application for appointment.

b. The City Clerk shall furnish each applicant with a copy of this ordinance and shall advise each applicant of the dates(s) set by the Council for public hearings on the applications.

~~c. The City Clerk shall further furnish all applicants with financial disclosure forms and each applicant who shall subsequently be invited to answer questions of the Council at the second public hearing shall complete and file such forms with the City Clerk at the close of business (5:00 o'clock p.m.) on the day following adjournment of the first public hearing. Each such applicant shall be informed by the City Clerk that a police and credit check shall be made on the applicant and the Council informed on the results thereof.~~

(Amended 12-21-76 by O-11966 N.S. effective 12-21-76).

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§ 27.3105 ~~Two~~ Public Hearing(s)

Before any appointment to fill a vacancy in an elective office shall be made, the Council shall hold ~~two (2)~~ at least one (1) public hearings for the purpose of considering the applications for appointment. The ~~first public~~ hearing shall be held no sooner than the fifth (5th) day after the period for filing applications has ended as provided in Section 27.3103, and the A second public hearing shall may be held no sooner than five (5) days and no later than seven (7) days after the first public hearing if there are additional questions or if additional time for discussion is needed by the Council prior to making the appointment. In the instance of a vacancy in the office of the Mayor or City Attorney, the dates thereof of the public hearing shall be established and set by the Council in the special meeting required to be held by Section 27.3102. In the case of a vacancy in the office of a Council District where there will be less than one (1) year remaining in the term, the presiding officer of the Council shall call this hearing.

(Added 7-23-75 by O-11654 N.S.)

§ 27.3106 First Public Hearing and Appointment

a. At the first public hearing required by Section 27.3105, each applicant shall be allowed three (3) minutes to make a presentation to the Council in support of the applicant's candidacy for appointment. At the discretion of the presiding officer, Council members may ask brief questions for clarification concerning either the presentation or matters contained in the application filed with the City Clerk. Applicants shall also be expected to answer questions concerning their candidacy. Such questions may concern but need not be limited to the candidate's background, philosophy of government, reasons for seeking appointment, and opinions on relevant municipal issues. The presiding officer shall allow, through appropriate parliamentary procedures and within appropriate time limits, an appropriate number of questions to be asked of any applicant by those members of the public in attendance at the public meeting.

~~b. Before the conclusion of the first public hearing the Council shall select at least four (4) but no more than six (6) applicants to appear at the second public hearing. After the selection is made the presiding officer shall announce the names of the applicants invited to appear at the second public hearing and advise those selected that each will be required to file financial disclosure statements with the City Clerk by close of business (5:00 o'clock p.m.) on the following day or the next business day if the following days are holidays.~~

b. At the conclusion of the public hearing the Council may then or at a later meeting adopt a resolution appointing the person to fill the vacancy.

(Amended 1-19-81 by O-15427 N.S.)

§ 27.3107 Optional Second Public Hearing and Appointment

a. If the Council determines during the public hearing required by Section 27.3106 that there are too many candidates to consider in a single public hearing, the procedures outlined in this section may be used.

b. Before the conclusion of the first public hearing the Council shall select at least four (4) but no more than six (6) applicants to appear at the second public hearing. After the selection is made the presiding officer shall announce the names of the applicants invited to appear at the second public hearing.

~~a.c.~~ At the second public hearing required by ~~Section 27.3105~~, applicants shall be expected to answer questions concerning their candidacy. Such questions may concern but need not be limited to the candidate's background, philosophy of government, reasons for seeking appointment, and opinions on relevant municipal issues. The presiding officer shall allow, through appropriate parliamentary procedures and within appropriate time limits, an appropriate number of questions to be asked of any applicant by those members of the public in attendance at the second public meeting.

~~b.d.~~ At the conclusion of the second public hearing the Council may then or at a later meeting adopt a resolution appointing the person to fill the vacancy.

(Amended 1-19-81 by O-15427 N.S.)

§ 27.3108 Election of Appointed Councilmember Prohibited

Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term.

§ ~~27.3108~~ 27.3109 Ballot Designation of Persons Appointed to Fill Vacancies in the Office of the Mayor or the City Attorney

Anything to the contrary in Section 27.2201 notwithstanding, a person appointed to fill a vacancy to ~~an elective office of The City of San Diego~~ the office of the Mayor or the City Attorney, and seeking to be elected to that office at the next election and desiring to indicate his or her appointed incumbency or the title of the appointed office shall be designated on the ballot at that election only in such a manner as to indicate that the person occupies such office by virtue of appointment rather than election. Without limitation, and purely as examples, acceptable forms of designation are: "Appointed Incumbent," ~~"Appointed Council Member,"~~ "Appointed Mayor," "Appointed City Attorney." The limitation on the number of words that may be used as provided by Section 27.2201 shall remain at "four."

CITY OF SAN DIEGO
Proposition B

(This proposition will appear on the ballot in the following form.)

PROP B

**AMENDS THE CHARTER OF THE CITY OF SAN DIEGO
BY AMENDING SECTION 12 PERTAINING TO COUNCIL
VACANCIES.**

Shall Section 12 of the Charter of The City of San Diego pertaining to filling Council vacancies be amended to read as follows:

(h) If a vacancy occurs for any reason in the office of a Council District, the procedures set forth in Charter section 12(h) shall be followed:

(1) If the vacancy occurs for any reason other than a successful recall election, and,

(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,

(B) If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(i) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within forty-nine (49) days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of Charter section 12(h), a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(i). If vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

This proposition also contains housekeeping amendments to alphabetize the paragraphs in Section 12.

PROPOSED CHARTER AMENDMENT

The following is a proposed charter amendment. The portions to be deleted are printed in ~~strike-out~~ type, and the portions to be added are underlined.

Amend Section 12 of the Charter of The City of San Diego to read as follows: THE COUNCIL.

(a) The Council shall be composed of nine (9) Councilmembers, including the Mayor, and shall be the legislative body of the City, each of the members of which including the Mayor, shall have the right to vote upon all questions before it.

(b) At the municipal primary and general election in 1979, a Mayor shall be chosen by the electors for a term of five (5) years. A Mayor shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter. The Mayor shall hold office for the term prescribed from and after 10 a.m. the first Monday after the first day of December next succeeding the election and until a successor is elected and qualified.

(c) At the municipal primary and general elections in 1993, the Council members for Districts 1, 3, 5, and 7 shall be chosen by the electors for a term of three (3) years. Council members for Districts 1, 3, 5, and 7 shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(d) At the municipal primary and general election in 1995, Council members for Districts 2, 4, 6, and 8 shall be chosen by the electors for a term of three (3) years. Council members for Districts 2, 4, 6, and 8 shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(e) Except as provided in this Section, Council members shall hold office for the term of four (4) years from and after 10 a.m. the first Monday after the first day of December next succeeding their election and until their successors are elected and qualified.

(f) Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two consecutive four-year terms as a Council member from any particular district. If for any reason a person serves a partial term as Councilmember from a particular district in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding office prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(g) Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district in which they reside, unless as a result of such redistricting more than one incumbent Council member resides within any one district, in which case the City Council may determine by lot which Council member shall represent each district. At the next municipal primary and general elections following a redistricting, Council members shall be elected from those districts not represented and from those districts represented by incumbent Council members whose terms expire as of the general election in said year. If as a result of any redistricting more than a simple majority of the City Council as redistricted shall be elected at either the municipal primary or general election next following any such

redistricting, the City Council prior to any such election shall designate one or more new districts for which the initial council term shall be two (2) years in order to retain staggered terms for Council members.

~~Except as otherwise provided in this paragraph, in the event a vacancy occurs for any reason in the office of a Council District, the Council shall immediately cause an election to be held to fill such vacancy solely in the district in which the vacancy occurred. Such election shall be conducted within ninety (90) days of the vacancy. The candidate receiving the greatest number of votes shall be deemed to be and declared by the Council to be elected to the vacant office. If, however, a vacancy occurs for any reason in the office of a Council District within 100 days of an upcoming regular municipal election, the Council may in its discretion forgo the election process and fill the vacancy by appointment. Any person who fills the vacancy shall hold office only until the next regular municipal election, at which time a person shall be elected under the provisions of Section 10 of this Charter to serve for the remainder, if any, of the unexpired term.~~

(h) If a vacancy occurs for any reason in the office of a Council District, the procedures set forth in Charter section 12(h) shall be followed:

(1) If the vacancy occurs for any reason other than a successful recall election, and,

(A) If the vacancy occurs with one (1) year or less remaining in the term the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,

(B) If the vacancy occurs with more than one (1) year remaining in the term the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(i) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) If no candidate receives a majority of votes cast in the special election a special run-off election shall be held within forty-nine (49) days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of Charter section 12(h), a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section

12(i). If vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

(i) It is the duty of the Council members to attend all Council meetings. The Council shall vacate the seat of any Councilmember who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless the absence thereof is excused by resolution of the Council.

(j) Council members, including the Mayor, shall devote full time to the duties of their office and not engage in any outside employment, trade, business or profession which interferes or conflicts with those duties.

(k) Council members shall not be eligible during the term for which they were appointed or elected to hold any other office or employment with the City, except as Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.